

House File 41 - Introduced

HOUSE FILE 41

BY HUNTER

A BILL FOR

1 An Act requiring employers to provide employees with meal
2 periods and rest periods and providing penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 84A.5, subsection 4, Code 2015, is
2 amended to read as follows:

3 4. The division of labor services is responsible for the
4 administration of the laws of this state under chapters 88,
5 88A, 88B, 89, 89A, 89B, 90A, 91, 91A, 91C, 91D, 91E, 91F, 92,
6 and 94A, and section 85.68. The executive head of the division
7 is the labor commissioner, appointed pursuant to section 91.2.

8 Sec. 2. Section 91.4, subsection 2, Code 2015, is amended
9 to read as follows:

10 2. The director of the department of workforce development,
11 in consultation with the labor commissioner, shall, at the
12 time provided by law, make an annual report to the governor
13 setting forth in appropriate form the business and expense of
14 the division of labor services for the preceding year, the
15 number of remedial actions taken under chapter 89A, the number
16 of disputes or violations processed by the division and the
17 disposition of the disputes or violations, and other matters
18 pertaining to the division which are of public interest,
19 together with recommendations for change or amendment of the
20 laws in this chapter and chapters 88, 88A, 88B, 89, 89A, 89B,
21 90A, 91A, 91C, 91D, 91E, 91F, 92, and 94A, and section 85.68,
22 and the recommendations, if any, shall be transmitted by the
23 governor to the first general assembly in session after the
24 report is filed.

25 Sec. 3. NEW SECTION. 91F.1 Meal and rest periods —
26 requirements.

27 1. As used in this chapter, unless the context otherwise
28 requires:

29 a. "Commissioner" means the labor commissioner appointed
30 pursuant to section 91.2.

31 b. "Employee" means a natural person who is employed in this
32 state for wages by an employer.

33 c. "Employer" means a person, as defined in section 4.1,
34 who in this state employs for wages a natural person. An
35 employer does not include a client, patient, customer, or

1 other person who obtains professional services from a licensed
2 person providing the services on a fee service basis or as an
3 independent contractor.

4 2. An employer shall provide an employee with appropriate
5 meal periods and appropriate rest periods.

6 a. An appropriate meal period shall be a period of not less
7 than thirty minutes during an employee's work period in which
8 an employee works at least seven hours. The meal period shall
9 be taken between the second and fifth hours. If an employee
10 works more than seven hours, the meal period shall be taken
11 between the third and sixth hours.

12 b. An appropriate rest period shall be a paid period of
13 not less than ten minutes during every consecutive four-hour
14 period of work taken by an employee approximately in the middle
15 of each four-hour period. The rest period is in addition to a
16 meal period, if applicable, and shall not be added to a meal
17 period or deducted from the work period to reduce the overall
18 length of the total work period.

19 3. An employer is not required to pay for a meal period
20 if an employee is free from work duties during the employee's
21 entire meal period. An employee shall be paid for the meal
22 period if any of the following occur:

23 a. The employee is required or allowed to remain on duty.

24 b. The employee is required to be on-call at the work
25 premises or designated worksite to be available to return to
26 duty even if the employee is not called back to duty.

27 c. The employee is called back to duty during the employee's
28 meal period even though the employee is not usually on-call
29 during the meal period.

30 Sec. 4. NEW SECTION. 91F.2 Meal and rest periods —
31 exemptions.

32 1. Meal and rest period requirements may be modified by the
33 terms of a collective bargaining agreement if the collective
34 bargaining agreement entered into by the employees prescribes
35 specific terms concerning meal periods and rest periods.

1 2. Meal and rest period requirements apply to hourly paid
2 and salary-paid employees. Management or employees involved
3 in agricultural jobs are not required to have breaks or meal
4 breaks. For the purposes of this section, agricultural jobs do
5 not include work in the production of seed, limited to removal
6 of off-type plants and corn tassels and hand-pollinating during
7 the months of June, July, and August by persons ages fourteen
8 and older.

9 3. Meal period requirements may be waived when an employer
10 can show that the ordinary nature and circumstance of the
11 work prevented the employer from establishing and maintaining
12 a regularly scheduled meal period. The factors that may be
13 considered regarding the waiver of the requirements are limited
14 to the following:

15 a. The safety and health needs of employees, patients,
16 clients, and the public.

17 b. The lack of other employees available to provide relief
18 to an employee.

19 c. The cost involved in shutdown and startup of machinery in
20 continuous operation of the industrial process.

21 d. The intermittent and unpredictable workflow not
22 controlled by the employer or employee.

23 e. Unforeseeable equipment failures, emergencies, or acts
24 of nature that require immediate and uninterrupted attention
25 by an employee.

26 Sec. 5. NEW SECTION. 91F.3 Civil penalties.

27 1. Any employer who violates the provisions of this chapter
28 or the rules adopted pursuant to this chapter is subject to a
29 civil penalty of not more than one hundred dollars for each
30 violation. The commissioner may recover the civil penalty
31 according to subsections 2 through 5. Any civil penalty
32 recovered shall be deposited in the general fund of the state.

33 2. The commissioner may propose that an employer be assessed
34 a civil penalty by serving the employer with notice of such
35 proposal in the same manner as an original notice is served

1 under the rules of civil procedure. Upon service of such
2 notice, the proposed assessment shall be treated as a contested
3 case under chapter 17A. However, an employer must request a
4 hearing within thirty days of being served.

5 3. If an employer does not request a hearing pursuant
6 to subsection 2 or if the commissioner determines, after an
7 appropriate hearing, that an employer is in violation of this
8 chapter or the rules adopted pursuant to this chapter, the
9 commissioner shall assess a civil penalty which is consistent
10 with the provisions of subsection 1 and which is rendered with
11 due consideration for the penalty amount in terms of the size
12 of the employer's business, the gravity of the violation,
13 the good faith of the employer, and the history of previous
14 violations.

15 4. An employer may seek judicial review of any assessment
16 rendered under subsection 3 by instituting proceedings for
17 judicial review pursuant to chapter 17A. However, such
18 proceedings must be instituted in the district court of the
19 county in which the violation or one of the violations occurred
20 and within thirty days of the day on which the employer was
21 notified that an assessment has been rendered. Also, an
22 employer may be required, at the discretion of the district
23 court and upon instituting such proceedings, to deposit the
24 amount assessed with the clerk of the district court. Any
25 moneys so deposited shall either be returned to the employer
26 or be forwarded to the commissioner for deposit in the general
27 fund of the state, depending on the outcome of the judicial
28 review, including any appeal to the supreme court.

29 5. After the time for seeking judicial review has expired
30 or after all judicial review has been exhausted and the
31 commissioner's assessment has been upheld, the commissioner
32 shall request the attorney general to recover the assessed
33 penalties in a civil action.

34 Sec. 6. NEW SECTION. 91F.4 Duties and authority of
35 commissioner.

1 1. The commissioner shall provide further exemptions from
2 the provisions in this chapter when reasonable.

3 2. In order to carry out the purposes of this chapter,
4 the labor commissioner or the commissioner's designee, upon
5 presenting appropriate credentials to the employer or agent of
6 the employer, may do any of the following:

7 a. Inspect employment records relating to meal and rest
8 periods for employees.

9 b. Interview an employer or employee or an agent of
10 the employer or employee, during working hours or at other
11 reasonable times.

12 EXPLANATION

13 The inclusion of this explanation does not constitute agreement with
14 the explanation's substance by the members of the general assembly.

15 This bill creates a new Code chapter 91F that requires an
16 employer to provide an employee with appropriate meal periods
17 and appropriate rest periods.

18 The bill states that an appropriate meal period shall be not
19 less than 30 minutes during an employee's work period of at
20 least seven hours. The meal period is to be taken between the
21 second and fifth hours of the work or, if the employee works
22 more than seven hours, between the third and sixth hours.

23 The bill states that an appropriate rest period shall be a
24 paid period of not less than 10 minutes during every four-hour
25 work period. The rest period is taken in the middle of the work
26 period. The rest period is in addition to the meal period and
27 cannot be added to the meal period or deducted from the work
28 period to reduce the overall length of the total work period.

29 The bill defines an "employee" as a natural person who is
30 employed in this state for wages by an employer. An "employer"
31 is defined as a person, as defined in Code section 4.1, who
32 employs a natural person for wages.

33 The bill provides that an employer is not required to pay for
34 a meal period if an employee is free from work duties during
35 the employee's entire meal period.

1 The bill allows three exemptions to the meal and rest period
2 requirements. The first exemption is if the meal and rest
3 period requirements are modified by the terms of a collective
4 bargaining agreement. However, the exemption is valid only
5 if the collective bargaining agreement entered into by the
6 employees prescribes specific terms concerning meal periods and
7 rest periods.

8 The second exemption states that meal and rest period
9 requirements apply to hourly paid and salary-paid employees.
10 However, management or employees involved in certain
11 agricultural jobs are not required to have breaks or meal
12 breaks.

13 The third exemption is when an employer can show that the
14 ordinary nature and circumstance of the work prevented the
15 employer from establishing and maintaining a regular scheduled
16 meal period.

17 The bill provides civil penalties for violating the new
18 Code chapter. An employer who violates the provisions shall
19 be subject to a penalty of up to \$100 for each violation. The
20 labor commissioner may recover the penalties under Code chapter
21 17A contested case procedures. Any penalties recovered shall
22 be deposited in the general fund of the state.

23 The commissioner may propose that an employer be assessed a
24 penalty by serving the employer with notice of a penalty in the
25 same manner as an original notice is served under the rules of
26 civil procedure.

27 The bill provides the labor commissioner with the authority
28 to provide further exemptions from new Code chapter 91F when
29 reasonable. Also, the labor commissioner or the commissioner's
30 designee may inspect employment records relating to rest
31 periods for employees and interview an employer or employee or
32 an agent of the employer or employee, during working hours or
33 at other reasonable times.